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22 OMNI PACIFIC COMPANY, INC.



23 **UNITED STATES DISTRICT COURT**
24 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
25 **SAN JOSE DIVISION**

26 OMNI PACIFIC COMPANY, INC.,

27 Plaintiff,

28 v.

OMNIBRANDS, INC.,

Defendant.

Case No. C 04-1445 JW HRL

**STIPULATION TO EXTEND TIME TO
FILE MOTION TO EXCLUDE EXPERT
TESTIMONY AND ~~PROPOSED~~ ORDER**

1 WHEREAS, the Court's Scheduling Order entered on January 11, 2005 requires the
2 following:

3 disclosure of expert witnesses by Plaintiff OMNI PACIFIC COMPANY, INC. ("OMNI
4 PACIFIC") and defendant OMNIBRANDS, INC. ("OMNIBRANDS"), on or before July 14,
5 2005;

6 any motion to exclude an expert or any portion of expert testimony to be scheduled for
7 hearing no later than August 29, 2005;

8 any motion to exclude an expert or any portion of expert testimony, therefore, to be filed
9 on or before July 25, 2005 in order to comply with the requisite 35-day notice to opposing party;

10 disclosure of rebuttal expert witnesses no later than July 28, 2005;

11 all discovery, including supplemental disclosures and depositions of expert witnesses, to be
12 completed by September 21, 2005; and

13 dispositive motions to be heard no later than October 25, 2005; and
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15 WHEREAS, neither party would have had the opportunity to review rebuttal expert
16 reports, scheduled to be served on July 28, 2005, before filing a motion to exclude an expert or
17 any portion of expert testimony, as such motions were required to be filed on or before July 25,
18 2005;

19 WHEREAS, neither party would have had the opportunity to depose any of the proffered
20 experts before filing a motion to exclude an expert or any portion of expert testimony. Expert
21 witnesses were designated only 11 days prior to the July 25, 2005 deadline for filing a motion to
22 exclude an expert;

23 WHEREAS, it would be more expedient and productive for OMNI PACIFIC and
24 OMNIBRANDS to prepare and file a motion to exclude an expert or any portion of expert
25 testimony after they have had the opportunity to review rebuttal expert reports and, if necessary,
26 depose expert witnesses; and

27 Plaintiff OMNI PACIFIC and defendant OMNIBRANDS hereby stipulate as follows:
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1 Plaintiff OMNI PACIFIC and defendant OMNIBRANDS hereby request that the Court
2 modify the Scheduling Order such that motions to exclude experts or any portion of expert
3 testimony will be filed no later than September 12, 2005. To allow for the proper notice period
4 and comply with the Court's October 24, 2005 deadline for hearing dispositive motions, motions
5 to exclude an expert or any portion of expert testimony shall be noticed for hearing between (and
6 including) October 17, 2005 and October 24, 2005, in accordance with the Court's calendar.

7
8 SO STIPULATED.

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10 Dated: July ~~26~~, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

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12 By:


Jeffrey M. Hamerling
Rachel E. Matteo-Boehm
Attorneys for Defendant
OMNIBRANDS, INC.

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16
17 Dated: July __, 2005

THELEN REID & PRIEST LLP

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19 By

Robert A. Weikert
Attorneys for Plaintiff
OMNI PACIFIC COMPANY, INC.

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23 IT IS SO ORDERED. The parties shall file any motion to exclude all or part of an expert
24 witness's report or testimony on or before September 12, 2005 for a hearing on October 24th,
25 2005.

26 Dated: Aug. 2, 2005

By /s/ James Ware

Hon. James Ware
United States District Court Judge

1 Plaintiff OMNI PACIFIC and defendant OMNIBRANDS hereby request that the Court
2 modify the Scheduling Order such that motions to exclude experts or any portion of expert
3 testimony will be filed no later than September 12, 2005. To allow for the proper notice period
4 and comply with the Court's October 24, 2005 deadline for hearing dispositive motions, motions
5 to exclude an expert or any portion of expert testimony shall be noticed for hearing between (and
6 including) October 17, 2005 and October 24, 2005, in accordance with the Court's calendar.

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8 SO STIPULATED.

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10 Dated: July 26, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

11
12 By:

Jeffrey M. Hamerling
Rachel E. Matteo-Boehm
Attorneys for Defendant
OMNIBRANDS, INC.

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17 Dated: July 29, 2005

THELEN REID & PRIEST LLP

18
19 By



Robert A. Weikert
Attorneys for Plaintiff
OMNI PACIFIC COMPANY, INC.

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23 IT IS SO ORDERED. The parties shall file any motion to exclude all or part of an expert
24 witness's report or testimony on or before September 12, 2005 for a hearing on October ____,
25 2005.

26 Dated: _____, 2005

By _____

Hon. James Ware
United States District Court Judge

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